MEMORANDUM OF AGREEMENT

BETWEEN THE

TRUSTEES

OF THE

CINCINNATI SOUTHERN RAILWAY

AND

The Cincinnati Railroad Company.

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1879

MEMORANDUM OF AGREEMENT

BETWEEN THE

Trustees of the Cincinnati Southern Railway,

AND THE

THE CINCINNATI RAILROAD COMPANY.

WHEREAS, The said Trustees have completed that portion of the Cincinnati Southern Railway lying between Cincinnati and Somerset, with an inclined plane at Ludlow reaching to the Ohio river, and a line of telegraph between the same places, and

WHEREAS, Said Trustees have power, by virtue of the act under which they are appointed, to rent or lease the right to use and operate such portions of said Railway as may be completed, upon such terms as they may deem best, and

WHEREAS, Said Trustees deem it their trust duty and the interest of Cincinnati to provide for the travel and traffic arising along the completed portion of said Railway, and from its connections, it is agreed as follows:

ARTICLE I.

That said Trustees, for the consideration hereinafter stated, hereby give and grant to the said Company a determinable license, with the rights, following, viz:

1. To pass and repass, and have full and free ingress, egress and regress, with its engines, cars, officers, agents and servants, to, over, upon and along the main and side tracks, turn-outs, switches, turntables, water and fuel stations, and all other conveniences, and into and out of the grounds, depots, stations, stables, shops, and other appendages, of said portion of said Railway.

2. To use the line of telegraph as now constructed between the aforesaid points, and the offices, batteries, instruments, and other conveniences connected therewith, for commercial and railway business, but subject to the right of said Trustees, their officers and agents, to have their official messages sent over the same free of charge, which the said Company agrees to do.

3. To stretch and maintain additional wires on the posts erected along said line, between said points, and to establish new offices and facilities for the business passing over the same.

But all the foregoing rights shall be subject to the following rules and regulations:

1. The said portion of said railway shall be operated, and the locomotives, cars and trains thereon run under the direction of a General Manager, to be appointed by said Company, subject to the approval of said Trustees, and removable by the concurrent action of said Trustees and said Company, or by decision of arbitrators as hereinafter provided Said General Manager shall from time to time establish such uniform rules and regulations for the passage of locomotives, cars and trains, and the use of grounds, depots and other appendages, as will tend to the most efficient working of said portion of said railway for all purposes, giving preference however, to travel and traffic over construction, supply and repair trains, except in cases of emergency; provided, that such rules and regulations shall at all times be subject to the approval of said Company and said Trustees; and if they cannot agree as to the rules and regulations so to be established, the subject matter of difference shall be subject to arbitration as hereinafter provided.

2. The railway business shall in all cases have preference over all other business on the wire provided by said Trustees.

ARTICLE II.

Said Trustees shall during the existence of this license, furnish to said Company a sufficient supply of water. All other railway supplies, including the books of account and forms hereinafter required to be used, which may be necessary to do the business of said portion of said railway promptly, shall be purchased, upon requisitions certified to by said General Manager, by the Company through a Purchasing Agent to be appointed by said Company subject to the approval of said Trustees, and removable by the concurrent action of said Trustees, and said Company or by decision of arbitrators as hereinafter provided.

ARTICLE III.

Said Trustees shall keep and maintain said portion of said railway in good order and repair for the business likely to arise along the line of the same during the existence of this license, and provide such temporary depots, platforms, engine and station houses, repair shops and other facilities as may be necessary or may become necessary for said business, as soon as it can be conveniently done, with the means at their command; and said Company shall furnish to said Trustees, at cost, fuel, and such other railway supplies, as said Company may have, and shall at like cost to said Company, make such repairs of said Trustees' engines and rolling stock, as the means at command of said Company will allow.

ARTICLE IV.

No other license for traffic or travel over said portion of said Railway shall be granted to any other persons or company, to take effect during the existence of the foregoing license, but the same shall be exclusive as to traffic and travel, and shall continue, until six months after the completion of the whole line of the Cincinnati Southern Railway, and the lease thereof for a term of years to said Company or other

parties, or a sale thereof when the same shall terminate; but said Trustees shall have the right at any time after eighteen months from the date hereof to terminate this license upon serving written notice of their intention so to do at the principal office of said Company six months before the day fixed in said notice for the termination thereof.

ARTICLE V.

Said company shall as and when directed by the Trustees, furnish in good order and keep in repair, sufficient locomotives and other rolling stock to run daily, (Sundays excepted), such trains as will do the business of said portion of said Railway, and shall run the same with its own agents. The number of locomotives and amount of such rolling stock to be furnished from time to time and the cost of the same shall be subject to the approval of said Trustees. No locomotive or other rolling stock shall be run by it thereon that is not in good order and repair, and any such rolling stock not in good order or repair so run on the same and not removed therefrom after reasonable notice, shall be liable to be treated as *damage feasant*, but nothing herein shall be construed into a duty upon the part of said Trustees to exercise their right.

ARTICLE VI.

Said company shall, during the continuance of this license, do every act and thing that may be by law required of or be obligatory upon it or said Trustees, in respect to the operation and use of said portion of said railway by said Company, including the keeping and rendition of all accounts and reports that shall be by law required, either making and returning the same to the proper authorities, or furnishing all the data in its possession to enable the said Trustees to make the same, and in all cases, as the law may require.

ARTICLE VII.

A tariff for freight and passengers, and the number, wages and salaries of the officers and employes of said Company shall be fixed by said Company subject to the approval of said Trustees, and may be changed from time to time by agreement, and in case of difference the matter in dispute shall be referred to arbitration as hereinafter provided. No pass or permission to travel free on said Railway shall be granted to any person without the sanction of said Trustees, nor shall any contract be entered into with any Fast Freight or other Company, the effect of which will be to diminish the gross receipts or mileage properly due and proportionally earned for passing over said Railway. And said Company shall not discriminate against the citizens of Cincinnati in carrying freights or passengers from other railroads, but shall charge and receive only the same and no more for the same services in transporting to and from said city, freight and passengers going to or coming from one of said roads, that is charged or received from those going to or coming from any other of said roads, and no officer of any Fast Freight or Express Company, or competing or connecting Railroad Company shall be a Director or officer of said Company.

ARTICLE VIII.

Said Company shall keep regular books of account in the most approved form for railway accounts, and use all the most approved forms for the freight and passenger business upon said portion of said Railway, and the business of said telegraph line done under this license, and shall render within the first twenty days of each month, monthly statements to said Trustees, showing the entire earnings and the receipts and disbursements of said Company under this license; and the said Trustees, by themselves or agents, shall have free access to all the books and freight and passage lists, and other writings appertaining to the business

done under this license, and may, at their own cost, put their agents on any and all trains, or in any office, depot or place, to test the correctness of all accounts.

ARTICLE IX.

The entire gross receipts under this license shall be paid by said company daily into such bank or banks as said Trustees shall from time to time designate as depositories to the credit of the Operating Department of said Company, out of which, said Company shall allow and pay as follows, upon vouchers approved by said General Manager.

1. Such amounts as are or may be necessary to pay the current operating expenses and charges including the wages and salaries of the officers and employes of said Company, and the salary of said General Manager.

2. All damages, or liabilities and other expenses, including taxes incurred and paid by said Company on its capital and personal property used in operating said railway.

3. Monthly to said Company out of the gross receipts such sum as shall amount to the rate of seven per centum per annum on its paid up cash capital from the date of payment in, provided, that the amount of said paid up cash capital shall not be increased beyond the sum of three hundred thousand ($300,000) dollars, without the consent of the Trustees, provided, the Company assumes and binds itself to increase its capital stock to not exceeding one million ($1,000,000) dollars, if in the judgment of the Trustees of the Cincinnati Southern Railway, the business of the road should require it. The balance of said earnings shall be paid to said Trustees monthly within the first twenty days of each month, to fulfill their obligations under this agreement and as and for rent.

ARTICLE X.

At the expiration of said license or other termination of the same, as hereinbefore provided, said Trustees shall provide for the reimbursement of the said Company's outlay and liability, as follows:

The persons or Company taking said lease as hereinbefore provided, or otherwise succeeding said Company in its operation of said Railway, shall take all the engines and other rolling stock and personal property of said Company used in operating said Railway, and shall return and pay to said Company therefor an amount of money, which, together with interest thereon previously received by it, shall be equal to its cash capital actually paid in and used by said Company in operating said Railway, with interest thereon at seven per centum per annum from the date of payment in.

Said persons or Company shall likewise assume all such time contracts for the carriage of freight and passengers, or other contracts of a like nature, as may have been sanctioned by said Trustees; and also all outstanding or contingent liabilities of every kind, incurred by said Company in operating said Railway under this license. Said persons or Company shall also save and hold said Company harmless under and against said contracts and liabilities by a good and sufficient bond of indemnity; and in case a dispute shall arise under this article, between said Company and the persons or Company taking a lease of said Railway, or otherwise succeeding said Company in its operation of the same, in regard to the goodness or sufficiency of said bond of indemnity or otherwise, said dispute shall be determined by a majority of arbitrators, who shall be chosen by the said parties, and shall meet and proceed in the manner hereinafter provided in Article Twelfth, and their determination shall be final between the said parties who shall abide by the same. And it is understood and declared by the parties hereto, that the true intent of this

agreement is to return without any deduction whatever, to said Company the amount of cash actually paid in by its stock-holders, and used in operating said Railway, together with seven per centum per annum from the date of payment in, and to discharge said Company from and indemnify it against all the contracts and liabilities aforesaid; and this license shall continue and the right to operate said Railway under it, shall in no event cease, until the provisions of this Article are fully complied with, anything in this agreement to the contrary, notwithstanding.

ARTICLE XI.

In case said Company shall at any time or times during this license fail to pay to said Trustees the monthly balance of the earnings due them under this License, as provided in the Ninth Article hereof for the period of ten days, or shall willfully fail or omit to keep and perform any other of the stipulations hereof, on its part to be kept and performed for the period of thirty days, then, said Trustees or their assigns shall have the right to take possession of the engines, cars and other rolling stock and personal property of said company used in operating said railway, on repaying to said company a sum equal to its actual cash outlay with interest thereon at the rate of seven per cent per annum from date of payment in to the date of taking possession of said property by said Trustees, or their assigns, and on assuming the contracts and liabilities of said Company, and indemnifying it as provided in Article Tenth hereof. Provided that before said right of forfeiture and taking possession shall be exercised, the same shall be ascertained and determined by arbitrators as hereinafter provided, unless such determination shall be prevented by the act of said Company.

ARTICLE XII.

It is also agreed that all questions of difference arising between the parties hereto in relation to the true construction of this agreement or otherwise in reference to the rights of the parties under the same, shall upon the written demand of either party, be submitted to the arbitration of three disinterested arbitrators, two of whom shall be experienced railway managers, to be selected as follows; one by each party, and the third by the two so chosen; but if either party shall fail to appoint an arbitrator on its or their part within ten days after written notice of the selection of one by the other party, then the arbitrator selected by the party giving notice shall select a second, and the two thus chosen shall choose the third, and the award of said arbitrators, or a majority of them thus selected, shall be final and conclusive between the parties hereto. The said arbitrators shall meet at Cincinnati, and, on notice to the parties, proceed without being sworn to hear and determine the controversy; and if it relates to the manner of using said portion of said Railway, or the rules and regulations hereinbefore provided for, or the tariff for freight or passengers, or the number, wages or salaries of the officers or employes of said Company, or the removal of said General Manager, or said Purchasing Agent, said arbitrators shall have power to award and determine the manner of such use, and the proper rules and regulations to be observed, the proper tariff to be fixed, or the number, wages or salaries of the officers or employes of said Company, and to remove said General Manager, or said Purshasing Agent, and to direct either party to do all such acts as may be necessary or expedient to carry their award into effect; and they shall also have the power to award and determine that there has been a forfeiture of this license as provided for in Article Eleventh, and if they shall so adjudge and award, they, or the majority concurring in such award shall have power, and

the said Company does hereby irrevocably appoint them or a majority of them concurring, as its attorneys in fact, with authority and in the name and in behalf of said Company, to execute and deliver to said Trustees a surrender of this license and all rights under the same, and likewise to deliver to said Trustees, or their assigns the engines, rolling stock and personal property of said Company used in operating said Railway, upon payment for the same, and on being discharged from and indemnified against contracts and liabilities as provided in Articles Tenth and Eleventh ; and the arbitrators shall have power to determine the costs to be paid and which party shall pay them. And it shall be a good and complete bar to any action at law, or suit in equity founded on any matter, which by the provisions of this contract might have been submitted to such arbitration, that no demand for the same had been made ; or that the same had been submitted to arbitration under this agreement, and that said arbitration was still pending ; or that an award had been made and performed.

ARTICLE XIII.

And each of said parties covenants with the other that it will keep and perform all the stipulations of this agreement to be by it or them kept and performed and that they will not evade or violate the same, and particularly that said Company will, upon the expiration or other termination of this License deliver its engines and other rolling stock and property to the persons or Company taking a lease of the whole line of said railway after the completion of the same, as hereinbefore provided, and that in case of a refusal so to do, and in case of a termination of this license through the willful default of said Company as herein provided, it will deliver to said Trustees its said engines and other rolling stock and personal property used in operating said railway, upon payment for the same and on being discharged from and indemnified against

contracts, and liabilities as provided in Articles Tenth and Eleventh, and will not attempt to interfere with or interrupt the use of the same by other licensees or lessees of, or by said Trustees.

ARTICLE XIV.

The said Trustees hereby agree to extend the foregoing license to such other portions of said railway and telegraph, as they may complete out their own funds upon condition that all the stipulations and covenants of this agreement shall apply with equal force and effect to said extension.

ARTICLE XV.

Said Trustees shall allow and hereby grant the said Company the use of two of their engines and forty of their flat cars, to be hereafter designated, until the said Trustees shall need the same, and said Company accepts the same on the following terms: That it will keep and return the same upon request, in as good order and repair as the same may be when delivered to it, natural wear and tear excepted.

ARTICLE XVI.

And Whereas the said Trustees by a certain memorandum of agreement made between them and the Cincinnati Southern Railway Company, dated on the 3d day of July, A. D. 1877, to which reference is hereby made for the terms and conditions of the same, granted to said railway Company, a determinable license with the rights therein stated, among which is that said Trustees, upon the expiration of said license or other termination of the same, should provide for the reimbursement of said Company's outlay as in the sixth article of said agreement is provided. Now the said The Cincinnati Railroad Company, as the successor of the Cincinnati Southern

Railway Company, hereby undertakes and agrees to carry out, fulfill and observe all the obligations of the said Trustees as in said sixth article provided, and to submit to arbitration any dispute arising out of said article as provided by the seventh article of said agreement.

IN WITNESS WHEREOF, The said The Cincinnati Railroad Company has caused its Corporate Seal and the signature of its President to be hereunto affixed; and the said Trustees have caused A. H. Bugher, President pro tempore of the Board, to sign this agreement in triplicate on their behalf as such board, and not individually, on the nineteenth day of May, A. D. 1879.

THE CINCINNATI RAILROAD COMPANY,

[SEAL.] By W. J. LIPPINCOTT, President.

Attest: JACOB WIRTH, Secretary.

THE BOARD OF TRUSTEES OF THE CINCINNATI SOUTHERN RAILWAY,

By A. H. BUGHER, President pro tem.

Executed in triplicate by A. H. Bugher, President pro tempore, in presence of

H. H. TATEM, Secretary.